STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	:	
	:	
v.	:	C.A. No. T08-0048
	:	
BRIAN PRIEST	:	

DECISION

PER CURIAM: Before this Panel on September 17, 2008, Magistrate DiSandro (Chair),[1] Judge Almeida, and Magistrate Goulart sitting, is the State of Rhode Island's (State) appeal from Magistrate Noonan's decision, dismissing the charged violation of G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test." The State appeared before this Panel by and through the Attorney General. Brian Priest (Appellee) was represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On October 29, 2006, Appellee was charged with violating the aforementioned motor vehicle offense by an officer of the Burrillville Police Department.[2] The Appellee contested the charge, and the matter proceeded to trial. On December 7, 2006, the trial magistrate dismissed the charge pursuant to Rule 27(b) of the Rules of Procedure of the Traffic Tribunal. (State's Br. at 2.) The Appeals Panel affirmed the trial magistrate's disposition, whereupon the State appealed to the District Court pursuant to Rule 21(b) of the Rules of Procedure of the Traffic Tribunal. Id. The State ultimately prevailed before the District Court, and the case was remanded to the trial calendar. Id.

[1] Chief Magistrate Guglietta did not sit for this matter.

[2] The Appellee was also charged with violating G.L. 1956 § 31-15-11, "Laned roadways." The Appellee entered a plea of *nolo contendere* with respect to this charge.

On March 26, 2008, the parties appeared before a magistrate of the Traffic Tribunal for a preliminary hearing. Id. At the hearing, Appellee moved to dismiss the charge based on the failure of the Burrillville Police Department to preserve an allegedly exculpatory videotape which depicted Appellee inside the Burrillville Police Department on the day of his arrest. (Tr. at 2.)

Prior to the hearing, the parties stipulated that a videotape depicting Appellee while he was in the Burrillville Police Station existed and that the videotape was "recycled" pursuant to departmental policy before Appellee and his counsel had had an opportunity to view it.[3] (Tr. at 7.) Having thus stipulated, the State argued that Appellee's Motion to Dismiss should be denied because Appellee failed to satisfy "the tripartite test to determine whether a defendant's due-process rights have been infringed by the failure of law enforcement personnel to preserve evidence," as articulated by the Supreme Court of Rhode Island in State v. Garcia, 643 A.2d 180, 185 (R.I. 1994).

In order to ascertain the exculpatory value of the destroyed videotape, if any, the hearing magistrate decided to hear testimony from Burrillville's prosecution officer, Maurice Nault (Nault). Nault testified that on November 8, 2006, he received a letter from Appellee's counsel requesting copies of all videotapes and audiotapes depicting Appellee on the date of his arrest.[4] (Tr. at 20.) Nault responded to the letter by

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[3] The "recycling" process destroyed all images on the videotape. (Tr. at 7.)

[4] Although the issue of Appellee's letter to the Burrillville Police Department is not squarely before this Panel, we believe that it is necessary to bring attention to the failure of Appellee's counsel to observe this Tribunal's established protocol for discovery. Rule 11 of the Rules of Procedure of the Traffic Tribunal reads, in pertinent part

> *Upon motion of a defendant* the *court may order* the attorney for the State to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the State, upon a showing of materiality to the preparation of the defendant's defense and that the request is reasonable. (Emphasis added.)

informing Appellee's counsel of the procedure for viewing and copying the requested tape and of the Burrillville Police Department's policy of "recycling" the tapes every 30 days. Id. On cross-examination by the State, Nault testified that Appellee's counsel called to make arrangements to view the videotape in early December, shortly after the tapes had been "recycled." (Tr. at 31.) Nault made clear that the tapes were erased pursuant to departmental policy and that there was no evidence that anyone from the Burrillville Police Department purposefully or maliciously destroyed the tape depicting Appellee. (Tr. at 33.)

Following the hearing, the hearing magistrate granted Appellee's Motion to Dismiss. It is from this decision that the State now appeals. Forthwith is this Panel's decision.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8(f), the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

> "The appeals panel shall not substitute its judgment for that of the judge or magistrate on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge's findings, inferences, conclusions, or decisions are:
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> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the judge or magistrate;
> (3) Made following unlawful procedure;
> (4) Affected by another error of law;

Even a cursory reading of Rule 11 would have made clear to Appellee's counsel that his letter to the Burrillville Police Department, requesting the preservation of "tangible objects" such as audio and videotapes, was improper.

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

This Panel lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact. Link v. State, 633 A.2d 1345 (R.I. 1993). The Appeals Panel is "limited to a determination of whether the hearing justice's decision is supported by legally competent evidence." Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link, 633 A.2d at 1348). The Panel may reverse a decision of a hearing judge where the decision is "clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record." Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

Analysis

On appeal, the State argues that the hearing magistrate's decision to grant Appellee's Motion to Dismiss was affected by error of law and should be remanded for further proceedings. Specifically, the State argues that the hearing magistrate misapplied the analytical framework for uncovering constitutional infirmities when the government is no longer in possession of evidence: the three-part due process analysis of State v. Garcia, 643 A.2d 180 (R.I. 1994).

"In order to safeguard a criminal defendant's due-process right to a fair trial, the Supreme Court [of the United States] has developed what might loosely be called the area of constitutionally guaranteed access to evidence." Garcia, 643 A.2d at 184 (quoting California v. Trombetta, 467 U.S. 479, 485 (1984) (internal quotations omitted)).

"Together, Trombetta and [Arizona v.]Youngblood [, 488 U.S. 51 (1988)], established a tripartite test to determine whether a defendant's due-process rights have been infringed by the failure of law enforcement personnel to preserve evidence." Id. at 185. "This test requires a defendant to establish that the proposed evidence possesses, first, an exculpatory value that was apparent before the evidence was destroyed, and [second, is] of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." Id. (quoting Trombetta, 467 U.S. at 489) (internal citations omitted). "Third, a defendant also must demonstrate that the failure to preserve the exculpatory evidence amounted to bad faith on the part of the state." Id. (citing Youngblood, 488 U.S. at 58).

Here, the State contends that the hearing magistrate—while expressly finding that Garcia was inapplicable to the case at bar—proceeded to misapply two of the three prongs of the Garcia test in dismissing the charge against Appellee.[5]

With regard to the first prong of Garcia—that the exculpatory value of the evidence was apparent before the evidence was destroyed—the State argues that the hearing magistrate erred in finding that there was sufficient evidence that the recycled videotape was exculpatory and that the tape's exculpatory nature was readily apparent. Having reviewed the entire record, this Panel is satisfied that there was no competent evidence before the hearing magistrate from which he could have found that the "recycled" videotape was "favorable to [Appellee] and . . . material to guilt or punishment." State v. Werner, 851 A.2d 1093, 1105 (R.I. 2004). The hearing magistrate

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[5] The State stipulated that the second prong of the Garcia test—that the videotape "evidence was of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means"—was satisfied. See State v. Garcia, 643 A.2d 180, 185 (R.I. 1994) (quoting California v. Trombetta, 467 U.S. 479, 489 (1984)).

repeatedly asked Appellee's counsel what evidence Appellee had that would indicate that the videotape was exculpatory. (Tr. at 14, 16, 18). The Appellee's counsel responded that he requested the videotape in order to "know exactly what happened in regards to the purported refusal." (Tr. at 18.) As the State correctly asserts, the mere possibility that the recycled videotape "could have exculpated [Appellee] if preserved or tested is not enough to satisfy" the standard of constitutional materiality required for a defendant's due process rights to have been infringed by law enforcement's failure to preserve evidence. Werner, 851 A.2d at 1105. Accordingly, this Panel concludes that the hearing magistrate's analysis was affected by error of law.

With regard to the third prong of Garcia—that the failure to preserve the exculpatory evidence amounted to "bad faith" on the part of the state—the State asserts that the hearing magistrate erred in finding that the Burrillville Police Department's "recycling" of the videotape following Appellee's letter evidence rose to the level of "bad faith" required by our case law. Having reviewed the record in its entirety, this Panel is satisfied that the hearing magistrate's "bad faith" finding is clearly at odds with the controlling legal authority on this issue, State v. Werner. In Werner, the Supreme Court of Rhode Island adopted the definition of "bad faith" established by the Supreme Court of the United States in Arizona v. Youngblood and its progeny: "bad faith destruction of evidence occurs when the police know it could form a basis for exonerating the defendant but destroy the evidence anyway." Werner, 851 A.2d at 1106 (quoting Youngblood, 488 U.S. at 58) (internal quotations omitted). Here, it is clear that the hearing magistrate ignored Youngblood's strong emphasis on the good faith or bad faith on the part of the state when he found that the Burrillville Police Department's negligent "recycling" of the

videotape amounted to "bad faith." As we are satisfied that the hearing magistrate misapplied the prevailing legal standard for "bad faith," we conclude that his analysis was affected by error of law.

CONCLUSION

Upon a review of the entire record, this Panel concludes that the hearing magistrate's decision to dismiss the charged violation of § 31-27-2.1 was affected by errors of law. Substantial rights of the State have been prejudiced. The State's appeal is hereby granted, and the matter is remanded for a hearing on the merits.

ENTERED: